

BOIES, SCHILLER & FLEXNER LLP
RICHARD J. POCKER (NV Bar No. 3568)
300 South Fourth Street, Suite 800
Las Vegas, NV 89101
Telephone: (702) 382-7300
Facsimile: (702) 382-2755
rpocker@bsflp.com

BOIES, SCHILLER & FLEXNER LLP
STEVEN C. HOLTZMAN (*pro hac vice*)
FRED NORTON (*pro hac vice*)
KIERAN P. RINGGENBERG (*pro hac vice*)
1999 Harrison Street, Suite 900
Oakland, CA 94612
Telephone: (510) 874-1000
Facsimile: (510) 874-1460
sholtzman@bsflp.com
fnorton@bsflp.com
kringgenberg@bsflp.com

Attorneys for Oracle USA, Inc., Oracle
America, Inc., and Oracle International
Corporation

BINGHAM MCCUTCHEN LLP
GEOFFREY M. HOWARD (*pro hac vice*)
THOMAS S. HIXSON (*pro hac vice*)
KRISTEN A. PALUMBO (*pro hac vice*)
Three Embarcadero Center
San Francisco, CA 94111-4067
Telephone: 415.393.2000
Facsimile: 415.393.2286
geoff.howard@bingham.com
thomas.hixson@bingham.com
kristen.palumbo@bingham.com

DORIAN DALEY (*pro hac vice*)
DEBORAH K. MILLER (*pro hac vice*)
JAMES C. MAROULIS (*pro hac vice*)
ORACLE CORPORATION
500 Oracle Parkway
M/S 5op7
Redwood City, CA 94070
Telephone: 650.506.4846
Facsimile: 650.506.7114
dorian.daley@oracle.com
deborah.miller@oracle.com
jim.maroulis@oracle.com

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

ORACLE USA, INC., a Colorado corporation;
ORACLE AMERICA, INC. a Delaware
corporation; and ORACLE INTERNATIONAL
CORPORATION, a California corporation,

Plaintiffs,

v.

RIMINI STREET, INC., a Nevada corporation;
SETH RAVIN, an individual,

Defendants.

Case No. 2:10-cv-00106-LRH-PAL

**REVISED [PROPOSED] ORDER
GRANTING PLAINTIFFS ORACLE
USA, INC., ORACLE AMERICA, INC.,
AND ORACLE INTERNATIONAL
CORPORATION'S MOTION FOR
EVIDENTIARY SANCTIONS FOR
SPOILIATION**

REDACTED – PUBLIC VERSION

Hearing Date: July 17, 2012
Time: 1:45 p.m.
Courtroom: 3B

Judge: Magistrate Judge Peggy A. Leen

[PROPOSED] ORDER

Pending before this Court is Plaintiffs Oracle USA, Inc., Oracle America, Inc., and Oracle International Corporation's (collectively "Oracle") Motion for Evidentiary Sanctions for Spoliation against Defendants Rimini Street, Inc. and Seth Ravin (together, "Rimini") [Docket No. ____]. After full consideration of the moving and opposing papers of each party, the arguments of counsel, and all other matters presented to the Court, the motion is GRANTED.

In January 2010, [REDACTED] the contents of a Rimini network location known as the "software library." The evidence shows (and Rimini now concedes) that Rimini employees copied into the software library a wide array of PeopleSoft software and support materials, and later copied those same materials from the library to create installed copies of PeopleSoft software, referred to as "environments." The software library was not segregated in customer-specific "data silos" but was instead organized by product and version.

The Court has inherent authority to impose sanctions for spoliation, including for the destruction of evidence relevant to reasonably foreseeable litigation. *In re Nat'l Consumer Mortg., LLC*, 2:10-CV-00930-PMP, 2011 WL 1300540, at *8 (D. Nev. Mar. 31, 2011) (citing *United States v. Kitsap Physicians Svs.*, 314 F.3d 995, 1001 (9th Cir. 2002)). The duty to preserve evidence "extends to the period before litigation when a party should reasonably know that evidence may be relevant to anticipated litigation." *Morford v. Wal-Mart Stores, Inc.*, 2:09-CV-02251-RLH, 2011 WL 635220, at *3 (D. Nev. Feb. 11, 2011) (citing *In re Napster*, 462 F. Supp. 2d 1060, 1067 (N.D. Cal. 2006)).

Here, Rimini should have anticipated and did anticipate this litigation, as it admits in its Opposition (Opp'n at 4), prior to the January 2010 deletion of the software library. Accordingly, the January 2010 deletion of the software library was spoliation in violation of Rimini's duty to preserve evidence.

1 To determine which sanctions are appropriate for Rimini's spoliation, courts consider (1)
 2 the degree of fault of the party who altered or destroyed the evidence; (2) the degree of prejudice
 3 suffered by the opposing party; and (3) whether there is a lesser sanction that will avoid
 4 substantial unfairness to the opposing party. *See, e.g., Cont'l Cas. Co. v. St. Paul Surplus Lines*
 5 *Ins. Co.*, 265 F.R.D. 510, 533 (E.D. Cal. 2010).

6 First, Rimini is at fault. Its deletion of the library was "willful" because Rimini
 7 undertook an affirmative act after Rimini had "some notice that the documents were *potentially*
 8 relevant to the litigation." *Leon v. IDX Sys. Corp.*, 464 F.3d 951, 959 (9th Cir. 2006) (citation
 9 omitted; emphasis in original). That is a more than adequate basis for an award of evidentiary
 10 sanctions. *See Glover v. BIC Corp.*, 6 F.3d 1318, 1329 (9th Cir. 1993)

11 Second, the deletion prejudiced Oracle. Oracle contends that Rimini's creation and use
 12 of the software library supports its claim for copyright infringement and rebuts Rimini's license
 13 defense because, Oracle asserts, the customer licenses on which Rimini depends do not authorize
 14 use of software from one customer to support a different customer. Indeed, Rimini specifically
 15 pled in this case that it maintained clients' Oracle software and support materials in customer-
 16 specific "data silos", that its clients' Oracle software and support materials were not "physically
 17 co-mingled together," and that a centralized "library" of Oracle software and support material
 18 "never existed at Rimini Street." (Dkt. 153 at 2-3.) Rimini now concedes that it did copy
 19 Oracle software into its physically comingled library, and offers to stipulate to the library's
 20 contents. (Opp'n at 2.)

21 Furthermore, in discovery, Oracle propounded a number of interrogatories directed at
 22 these issues, including the contents of the software library and how it was copied, and moved to
 23 compel responses to certain of the interrogatories. Rimini claimed to be unable to respond
 24 completely due to lack of available information, including (1) the contents of the software library
 25 and (2) which of Rimini's local installed copies of PeopleSoft software, i.e., environments, were
 26 built using the software library. [REDACTED]

27 [REDACTED]

28 [REDACTED] Rimini concedes that it also

1 deleted metadata that would have demonstrated when software was copied into and out of the
 2 software library, and thus was relevant to Oracle's claims. (Opp'n at 3, 10.) As a result, on
 3 these key points, Oracle will have to "rely on incomplete and spotty evidence at trial," which
 4 supports an adverse inference sanction. *Leon*, 464 F.3d at 959 (quoting *Anheuser-Busch, Inc. v.*
 5 *Natural Beverage Distribs.*, 69 F.3d 337, 348 (9th Cir. 1995)).

6 Third, the sanction Oracle seeks – an adverse inference instruction – is the appropriate
 7 remedy in these circumstances. *See, e.g., Akiona v. United States*, 938 F.2d 158, 161 (9th Cir.
 8 1991); *E.I. du Pont de Nemours and Co. v. Kolon Industries, Inc.*, 803 F. Supp. 2d 469, 487
 9 (E.D. Va. 2011); *Advantacare Healthcare Partners LP v. Access IV*, No. 03-04496, 2004 WL
 10 1837997, at *7-*8 (N.D. Cal. Aug. 17, 2004). Mere payment of fees and expenses would leave
 11 Rimini with the advantage in this litigation created by its willful deletion of relevant evidence.
 12 And even if the sanction were to put Oracle in a "more advantageous position than if [Rimini]
 13 had never destroyed evidence to begin with, the inference is nevertheless appropriate, as it places
 14 the risk of an erroneous judgment on the party that wrongfully created the risk." *Io Group Inc. v.*
 15 *GLBT Ltd.*, C-10-1282 MMC DMR, 2011 WL 4974337, at *8 (N.D. Cal. Oct. 19, 2011) (citing
 16 *West v. Goodyear Tire & Rubber Co.*, 167 F.3d 776, 779 (2d Cir. 1999)).

17 Accordingly, IT IS HEREBY ORDERED THAT, an adverse inference sanction is
 18 appropriate. For summary judgment purposes, Rimini's January 2010 deletion of the software
 19 library shall be deemed evidence that supports Oracle's claims and does not support Rimini's
 20 defenses, and each of the two sets of facts listed below shall be presumed to be true, subject to
 21 rebuttal by Rimini. In addition, at any trial, the jury shall be instructed that it may infer from
 22 Rimini's January 2010 deletion of the software library that the contents of the software library
 23 would have supported Oracle's claims and would not have supported Rimini's defenses.
 24 Moreover, the jury shall be instructed to presume the following two sets of facts to be true,
 25 subject to rebuttal by Rimini.

- 26 1. The software library included a complete copy of each of Oracle's registered works
 27 corresponding to the names of the folders at the time of the deletion, including each of
 28 the following:

Deleted Folder Name (Ex. 50 (RSI06276320))	Corresponding Registered Oracle Work (Complaint ¶ 75)
CRM 8.8	PeopleSoft Customer Relationship Management Version 8.8
CRM 8.9	PeopleSoft Customer Relationship Management Version 8.9
EPM 8.8	PeopleSoft Electronic Performance Management Version 8.8
EPM 8.9	PeopleSoft Electronic Performance Management Version 8.9
FSCM 8.4 SP2	PeopleSoft Financials and Supply Chain Management Version 8.4 Service Pack 2
FSCM 8.8 SP1	PeopleSoft Financials and Supply Chain Management Version 8.8 Service Pack 1
FSCM 9	PeopleSoft Financials and Supply Chain Management Version 9
HRMS 8 SP1	PeopleSoft Human Resources Management System Version 8 Service Pack 1
HRMS 8.3 SP1	PeopleSoft Human Resources Management System Version 8.3 Service Pack 1
HRMS 8.8 SP1	PeopleSoft Human Resources Management System Version 8.8 Service Pack 1
HRMS 8.9	PeopleSoft Human Resources Management System Version 8.9
HRMS 9.0	PeopleSoft Human Resources Management System Version 9.0
PeopleBooks	Each of the separately registered versions of PeopleBooks alleged in this action
PT 8.21	PeopleTools Version 8.21
PT 8.22	PeopleTools Version 8.22
PT 8.42	PeopleTools Version 8.42
PT 8.45	PeopleTools Version 8.45
PT 8.46	PeopleTools Version 8.46
PT 8.47	PeopleTools Version 8.47
PT 8.48	PeopleTools Version 8.48
PT 8.49	PeopleTools Version 8.49

2. Each of the 74 installed copies of PeopleSoft software, *i.e.*, environments, listed below as identified in Rimini interrogatory responses, was created by copying PeopleSoft software contained in the software library, which was not obtained from or on behalf of the client associated with the environment.

1					
2					
3					
4					
5					
6					
7					
8					
9					
10					
11					
12					
13					
14					
15					
16					
17					
18					
19					
20					
21					
22					
23					
24					
25					
26					
27					
28					

1					
2					
3					
4					
5					
6					
7					
8					
9					
10					
11					
12					
13					
14					
15					
16					
17					
18					
19					
20					
21					
22					
23					
24					
25					
26					
27					
28					

1	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
2	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
3	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
4	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
5	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
6	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
7	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
8	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
9	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
10	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
11	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
12	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
13	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
14	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
15	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
16	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
17	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
18	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
19	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
20	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
21	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
22	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
23	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
24	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
25	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
26	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
27	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
28	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

1	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
2	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
3	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
4	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
5	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
6	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
7	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
8	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
9	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
10	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
11	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
12	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
13	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
14	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
15	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
16	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
17	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
18	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
19	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
20	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
21	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
22	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
23	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
24	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
25	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
26	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
27	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

28

1					
2					
3					
4					
5					
6					
7					
8					
9					
10					
11					
12					
13					
14					
15					
16					
17					
18					

IT IS SO ORDERED.

DATED: _____

By: _____

United States District Judge